

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:95-cr-007

Also Case No. 3:16-cv-212

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

DERRICK LAMONTE SMOOTE,

Defendant.

:

ORDER ALLOWING AMENDED § 2255 MOTION

This case is before the Court on Derrick Smoote's Motion for Leave to Amend Movant's Motion to Correct Sentence under 28 U.S.C. § 2255 (ECF No. 55).

The docket reflects that Defendant, with the assistance of counsel, filed his § 2255 Motion on June 4, 2016 (ECF No. 52). Although the Court has ordered the United States to file an answer, the deadline for that filing has not passed and the United States has not responded to the Motion to Vacate. Rule 12 of the Rules Governing § 2255 Proceedings permits the application of the Rules of Civil Procedure to the extent not inconsistent with statute or the § 2255 Rules. Fed. R. Civ. P. 15 permits a party to amend a "pleading" as a matter of course before a responsive pleading is filed. A § 2255 Motion constitutes a pleading within the meaning of that Rule.

Accordingly, Defendant is permitted to amend even without court permission at this stage of the proceedings. The Motion is therefore GRANTED. Counsel shall detach and file the Amended Motion separately.

July 22, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge